

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RONALD J. PICHE

Claimant

VS.

HOMESTEAD PHOTOGRAPHY

Respondent

AND

COMMERCIAL UNION INSURANCE COMPANY

Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 181,857

ORDER

Claimant appeals from a December 20, 1995 Award entered by Assistant Director Brad E. Avery. The Appeals Board heard oral argument on April 16, 1996 in Kansas City, Kansas.

APPEARANCES

Claimant appeared by and through his attorney, Robert W. Harris of Kansas City, Kansas. Respondent appeared by its attorney, James M. Roswold of Kansas City, Missouri. The insurance carrier appeared by its attorney, Kip A. Kubin of Overland Park, Kansas. The Workers Compensation Fund appeared by its attorney, B. Scott Tschudy of Overland Park, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopts the stipulations listed in the Award of the Assistant Director with the clarification as to stipulation No. 8 that no temporary total compensation or medical benefits have been paid to the claimant by the insurance carrier. As is noted in the Award by issue No. 6, respondent paid claimant the sum of \$11,550 for which it is seeking credit as temporary total disability compensation.

ISSUES

The Award of the Assistant Director found this claim not to be compensable based upon a finding that claimant had not met his burden of proving that his accidental injury arose out of and in the course of his employment. Claimant appeals that finding. Accordingly, the sole issue for determination by the Appeals Board is whether claimant's accident arose out of and in the course of his employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and considering the briefs and arguments of the parties, the Appeals Board finds that the Award entered by the Assistant Director should be affirmed.

The Award of the Assistant Director sets out his findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The Appeals Board finds them to be accurate and appropriate, and it adopts the findings and conclusions of the Assistant Director as its own as if specifically set forth herein. Specifically, the Appeals Board agrees that claimant has not sustained his burden of proof that his injury arose out of a work-related accident. That conclusion having been reached, compensation is denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Assistant Director Brad E. Avery dated December 20, 1995 should be, and hereby is, affirmed in all respects, and the orders contained in the Award are hereby adopted by the Appeals Board as its own.

IT IS SO ORDERED.

Dated this ____ day of April 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert W. Harris, Kansas City, KS
James M. Roswold, Kansas City, MO
Kip Kubin, Overland Park, KS
B. Scott Tschudy, Overland Park, KS
Brad E. Avery, Assistant Director
Philip S. Harness, Director